



Charles Figur/R8/USEPA/US  
03/26/2007 02:26 PM

To ERockler@ENRD.USDOJ.GOV  
cc Andrea Madigan/ENF/R8/USEPA/US@EPA, Steven  
Moores/ENF/R8/USEPA/US@EPA,  
DDain@ENRD.USDOJ.GOV, Linda  
bcc  
Subject Fw: Asarco -- signed estimation order

Steve -

Thanks for the quick copy.

Elliot - It looks like the East Helena owned property (work being done under the "RCRA consent decree") is not part of the estimation process right now. Is this correct? If not, are we on the band 2 schedule? If it is, how pressing is the need for us to get our version of an estimate done?

Thanks.

Chuck

----- Forwarded by Charles Figur/R8/USEPA/US on 03/26/2007 02:23 PM -----

Steven  
Moores/ENF/R8/USEPA/US  
03/26/2007 02:02 PM

To Charles Figur/R8/USEPA/US@EPA, Andrea  
Madigan/ENF/R8/USEPA/US@EPA  
cc  
Subject Fw: Asarco -- signed estimation order

This came today, from the State of Montana....

----- Forwarded by Steven Moores/ENF/R8/USEPA/US on 03/26/2007 02:02 PM -----



"Capdeville, Mary"  
<mcapdeville@mt.gov>  
03/26/2007 08:44 AM

To Steven Moores/ENF/R8/USEPA/US@EPA  
cc  
Subject FW: Asarco -- signed estimation order

Let me know what you set up. I can hook in by conference call. Right now, most of April is open.



ESTIMATION\_ORDER.pdf

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors.	§	(Jointly Administered)
	§	

---

HEARING DATES

**CASE MANAGEMENT ORDER  
ESTABLISHING PROCEDURES FOR ESTIMATION OF ASARCO LLC'S  
ENVIRONMENTAL LIABILITIES AND AUTHORIZING THE FILING OF OMNIBUS  
OBJECTIONS TO ENVIRONMENTAL CLAIMS**

Upon the Motion (the "Motion") of ASARCO LLC ("ASARCO" or the "Debtor") for the entry of an Order establishing procedures for the estimation of certain environmental claims against ASARCO and certain of its affiliated debtors (The "Debtors"), the Court, having considered the initial and supplemental objections of the United States and certain state agencies and all other objections to the Motion; and having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157; and it appearing that the relief requested in the Motion is in the best interests of ASARCO, its creditors and its estate, to the extent provided herein; and it appearing that the notice of the Motion was good and sufficient under the circumstances and that no further notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that ASARCO's request to establish procedures to estimate the environmental claims is granted to the extent provided herein; and it is further

ORDERED that the schedule attached as Exhibit A to this Order shall govern the timing of the proceedings for estimation of the environmental claims at the sites identified in Exhibit A (including past and future response and natural resource damage claims, but excluding

toxic tort, property damage or similar claims), and is binding upon the Debtors, all parties that have filed proofs of claim relating to these sites, and only with respect to these sites, including the United States, various states<sup>1</sup>, Indian tribes, and private parties (collectively, the "Environmental Claimants"), ASARCO Incorporated ("ASARCO Inc."), and such other parties that may become known and noticed of this Order, unless good cause is shown why such other party should not be bound by this Order;

ORDERED that the Debtors' First Omnibus Objection to claims filed on February 27, 2007 will be consolidated with the estimation proceedings governed by this Order, and adjudicated as part of this proceeding (or deferred to the extent that Debtors' objection for a site or a part thereof is not scheduled under this Order in Exhibit A) and that the Environmental Claimants and any other claimants shall not be required to respond to Debtors' objection other than through the schedule set forth in this Order and Exhibit A hereto (or a future order of the Court as to any matter deferred), scheduling orders previously entered by this Court related to the First Omnibus Objection are hereby vacated and the hearing previously set on The First Omnibus Objection for May 22, 2007 is hereby cancelled;

ORDERED that discovery in connection with these estimation proceedings shall be conducted pursuant to the Federal Rules of Bankruptcy Procedure, unless otherwise restricted, limited or expanded by this or any other order or ruling of the Court;

ORDERED that in order to promote the efficient administration of these proceedings and prevent delays in the schedule, Debtors shall be responsible for prosecuting any objections to and requests for estimation of environmental claims;

---

<sup>1</sup> Including state regulatory entities, Departments of Justice, or natural resource trustees on whose behalf a claim was filed.

ORDERED that in order to promote the efficient administration of these proceedings and to prevent delays in the schedule, no discovery may be propounded to the Environmental Claimants by any party other than the Debtors or the committee of unsecured creditors in the ASARCO LLC case (the "Committee") without prior leave of the Court; provided, however, that no party may propound formal discovery to the United States or a state regulatory agency (including Departments of Justice and natural resource damage trustees) without prior leave of court;

ORDERED that the schedule set forth on Exhibit A contemplates the idea that, in most cases, informal written fact discovery will have already taken place with regards to the sites and will continue to take place prior to the Discovery Period described on Exhibit A. If prior to or during the Discovery Period, the Debtors or an Environmental Claimant believes it is not receiving discoverable material from the Debtors or an Environmental Claimant, that party can seek direction from the Court by motion or at the next scheduled status conference, although all parties are directed to reasonably cooperate with one another in both formal and informal discovery;

ORDERED that in order to promote the efficient administration of these proceedings and prevent delays in the schedule, no party other than the Debtors and the Environmental Claimants and the Committee<sup>2</sup> may submit expert reports, witnesses, testimony, or may cross-examine in these proceedings without prior leave of the Court; provided, however, ASARCO, Inc. may submit expert reports but may not submit witnesses, testimony, or conduct

---

<sup>2</sup> The Committee does not presently anticipate submitting its own expert reports, calling its own expert witnesses to testify, propounding its own substantial discovery or engaging in substantial separate lines of questioning at depositions or at in-Court proceedings. However, the Committee reserves its right to engage in any of the foregoing if, in its judgment, unanticipated circumstances relating to any claim or claims warrant such action. The Committee anticipates submitting legal briefs and pleadings, and may engage in oral argument, in connection with the estimation proceedings. The Committee will participate in mediations. The Environmental Claimants reserve the right to oppose or seek to limit such participation by the Committee.

cross-examination without prior leave of the Court. If ASARCO, Inc. submits expert reports, it must do so on the same schedule set for such reports in Exhibit A. Further ASARCO, Inc. may not introduce such reports at an estimation hearing without prior leave of Court which must be sought within 7 days after ASARCO, Inc. submits the expert report. The parties to the estimation proceeding need not respond to ASARCO, Inc.'s reports unless the Court has granted ASARCO, Inc., leave to introduce such report at the estimation hearing;

ORDERED that any expert reports regarding each site must be submitted by the appropriate deadline in Exhibit A;

ORDERED that service in this contested matter may be accomplished electronically on all parties who received notice through the Court's electronic filing system; , and only the entities, through the persons listed on (v. 639.7) Exhibit B, Schedule 1, and on a site-by-site basis, the site-by-site notice parties listed on Exhibit B, Schedule 2, are required to be notified of proceedings regarding each site and served with copies of discovery pleadings, expert reports, the materials described on Exhibit A (v.7), and other similar materials relating to that site.<sup>3</sup>

ORDERED that at least twenty (20) days in advance of any estimation hearing for a site, the Debtors and Environmental Claimants who have filed proofs of claim for a site will participate in mediation regarding that site. Unless otherwise agreed to by the Debtors and the Environmental Claimants for a site, mediation with respect to sites for which a state regulatory agency (including state regulatory agencies, Departments of Justice and natural resource trustees) has filed a proof of claim shall occur in the state in which the site is located;

---

<sup>3</sup> Exhibit B can be reasonably modified to include or substitute additional attorneys upon the request of the represented party and without need for leave of Court.

ORDERED that, if a state regulatory entity (including Departments of Justice and natural resource damage trustees) has filed a claim at a given site, unless otherwise agreed to by the Debtors and the Environmental Claimants at that site, depositions of experts retained by a state or federal claimant as well as fact witnesses controlled by such claimants are to occur in the state in which the site at issue in the expert's report or of which the fact witness has knowledge is located;

ORDERED that, if a state regulatory entity has filed a claim with respect to a given site, the depositions of Debtors' expert witnesses, and fact witnesses under Debtors' control, shall take place in the state where the site is located. However, the Environmental Claimants shall reasonably cooperate with the Debtors in scheduling depositions to avoid undue burden on the timing, scheduling and travel requirements of the Debtors' expert and fact witnesses;

ORDERED that, except for the Debtors, the Environmental Claimants and the Committee, participation in these estimation proceedings of all other parties in interest in the bankruptcy case shall be limited to their presence at the estimation hearings, depositions, and mediations, and filing briefs. Any party (other than the Debtors, the Committee or the Environmental Claimants) seeking to propound discovery, ask more than a very few limited and necessary questions at a deposition, or present testimony or argue at an estimation hearing, may do so only with prior leave of Court;

ORDERED that, except as set forth herein, the Court is not hereby ruling on the procedures, conduct, or length of any hearing or group of hearings related to the estimation of environmental claims. Debtors and the Environmental Claimants may submit proposals to the Court for the procedures, conduct and length of the estimation hearings in advance of the pre-hearing conference scheduled for each such hearing.

ORDERED that except as otherwise provided herein, estimation of environmental claims for the unowned portions of sites referred to in Exhibit A will be for purposes of allowance, voting and distribution; provided, however, that any estimation shall be without prejudice to any right to assert or object to secured or administrative or other priority as to the amount determined through this estimation; provided further, that if the Environmental Claimants intend to assert secured, administrative or other priority for prepetition claims as to the unowned portions of the sites listed on Exhibit A, they must do so by identifying the site and the basis for the priority claim **prior to June 1, 2007**;

ORDERED that the Debtors and the Environmental Claimants acknowledge that disputes exist as to whether and what extent ASARCO has an ownership interest in or relating to the following sites: the Yak Tunnel Facility and the Yak Tunnel Water Treatment Facility, the Upper Blackfoot Site and the Barker-Hughesville Site (Block P). Therefore, the identification requirement established by the preceding paragraph (i) shall be deferred for each of these sites until that date that is 10 days after the Court rules on the ownership issues at each of these sites, and shall only apply if and to the extent the Court decides that the Debtor does not have an ownership interest in or relating to such site or an ownership interest in or relating to a particular area within such sites, and (ii) shall not apply to the assertion by the United States of a secured claim to the extent of a tax refund that ASARCO is attempting to obtain;

ORDERED that the United States, Colorado, Montana, Missouri, Washington and Texas have asserted that, with respect to the sites listed on Exhibit A, administrative or other injunctive orders for work that has not been completed are in place only for the following portions of the following sites: OUs 1 (Yak Tunnel operation and maintenance only), 5, 7 and 9 of California Gulch; East Helena Yards; the El Paso County Metals Site, the Butte site, Mike Horse EE/CA, Azurite EE/CA, the Encycle site, B&L Woodwaste, and the Glover Smelter (the

"Injunctive Order Sites"). Notwithstanding the foregoing sentence, the United States, the states, ASARCO, and the Committee reserve their rights with respect to the subsequent issuance of an injunctive order to address post-petition migration of hazardous substances on or from sites owned by any of the Debtors. The Environmental Claimants, ASARCO, and the Committee have reserved their rights as to the extent to which estimation should occur with respect to the Injunctive Order Sites and what the effect that estimation should have. The Environmental Claimants and ASARCO have agreed to the following course of action with respect to the Injunctive Order Sites:

1. The United States, the relevant states, and other Environmental Claimants that filed claims at each such site, and ASARCO, will attempt to settle the issues associated with the Injunctive Order Sites.

2. Failing at No. 1, the United States, the relevant states, and other Environmental Claimants that filed claims at each such site, and ASARCO will attempt, by settlement, to establish a limit on the cost to the Debtors with respect to the Injunctive Order Sites.

3. Failing at Nos. 1 or 2, the United States, the relevant states and other Environmental Claimants that filed claims at each such site and ASARCO will seek further direction from the Court;

ORDERED that all other potential issues for estimation proceedings identified in Debtors' Motion and the objections thereto which are not specifically addressed herein (including issues under section 502(e)) shall be deferred to future pleadings or motions practice and orders of the Court, if any, and the Court is not hereby ruling on such issues and the Debtors, Environmental Claimants and the Committee reserve all rights and objections on such issues;



ORDERED that because various of the Environmental Claimants believe and may stipulate that estimation is a type of proceeding that is different from environmental litigation in Federal or State District Court, these estimation proceedings (except as set forth in the following sentence) are not intended to and shall not have preclusive effect as collateral estoppel, *res judicata* or any similar doctrine of preclusion as between the United States, the various states, the Environmental Claimants, and any parties other than the Debtors, and the Environmental Claimants, or some of them, may present to this Court for approval stipulations consistent with this concept. Notwithstanding the foregoing, the Court makes no ruling or expression of intent at this time as to the preclusive effect of this estimation proceeding as to subsequent proceedings, if any, in which preclusion may be asserted between (1) the Debtors and the Environmental Claimants, (2) the Debtors and other parties, (3) Union Pacific Railroad Company ("UP") and the Environmental Claimants or (4) UP and other parties;

ORDERED that the following provisions shall apply with respect to, and only with respect to, the B&L Woodwaste Site: (a) The entry of this Order is without prejudice to the ability of any party to argue that claims with respect to the B & L Woodwaste Site, or particular issues raised by such claims, should be adjudicated rather than estimated by the Bankruptcy Court; and (b) the provisions of the preceding paragraph concerning preclusive effect of these proceedings shall not apply with respect to the B&L Woodwaste Site and the preclusive effect, if any, of any decisions entered by the Court with respect to the B&L Woodwaste Site shall be determined in subsequent actions, if any, in which preclusion may be asserted.

ORDERED that notwithstanding anything in this Order, the deadlines specified herein may be extended by agreement of the Debtors and the Environmental Claimants or by further order of the Court upon motion of any of the Debtors or the Environmental Claimants;

ORDERED that the Debtors or Environmental Claimants may also seek or the Court may order that additional or fewer procedures and deadlines may apply on a site-by-site basis;

ORDERED that in addition, the Debtors, the Committee, and certain Environmental Claimants have raised the possibility of separately briefing and arguing certain legal matters that may have a bearing upon issues at multiple sites. The entry of this Order does not preclude the Debtors, the Committee, or Environmental Claimants from seeking or objecting to, or the Court from ordering, that such issues be heard on a consolidated basis for sites affected and resolved at a time and in a manner not addressed in this Order or its Exhibits;

ORDERED that the Court is not ruling on, and the Debtors, the Committee, and the Environmental Claimants retain their respective rights to seek or object to, estimation of owned sites, including the owned portions of the sites that are otherwise being scheduled for estimation on Exhibit A because they contain non-owned portions;

ORDERED that the Court is not ruling on, and the Debtors, the Committee, and the Environmental Claimants retain their respective rights to seek or object to, estimation of sites not listed in Exhibit A; and

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from implementation of this Order.

Dated: March 23, 2007.

March 23, 2007



**RICHARD S. SCHMIDT**  
**UNITED STATES BANKRUPTCY JUDGE**

**Exhibit A: Environmental Estimation Scheduling Order<sup>4</sup>**

Estimation Status Hearing (Cal Gulch and all matters)<sup>5</sup> April 17, 2007

**California Gulch Schedule**

ASARCO Notice of Specific Objections<sup>6</sup> March 26, 2007

Initial Expert Reports Due<sup>7</sup> May 4, 2007  
(including update of claim amounts and assertion of all claims in a determined amount)<sup>8</sup>

Designation of Documents supporting Expert Reports and of potential witnesses and exhibits for hearing. May 4, 2007

Deadline for Parties' Agreement for format and timing of Mediation May 10, 2007

Discovery Period (including expert depositions) May 7 – July 6, 2007

Rebuttal Expert Reports Due June 22, 2007

Witness/Exhibit Lists Exchanged July 9, 2007

Pre-Trial Brief/Pre-Trial Motions/Objections July 9, 2007

Response Briefs July 16, 2007

Pre-Trial Conference July 20, 2007 at 10:00  
AM IN CORPUS CHRISTI.

---

<sup>4</sup> Footnotes 5 through 8 apply to all sites on Exhibit A.

<sup>5</sup> Status Hearings to occur bi-weekly as needed.

<sup>6</sup> For each site subject to this Schedule, ASARCO is to provide a reasonably detailed description of the factual and legal basis upon which it is objecting to each claim at the site and the anticipated issues in the estimation hearing. The parties recognize and agree that this disclosure does not preclude ASARCO from raising additional factual and legal defenses over the course of the case. However, the parties recognize that if such "new" defenses are asserted, additional discovery may be warranted, supplemental expert reports may be necessary and/or the schedules set forth herein may need to be changed.

<sup>7</sup> All parties wishing to submit expert testimony relating to this Site must exchange expert reports by this date.

<sup>8</sup> Many claimants have asserted claims or portions of claims in an undetermined amount or may have additional information available to update the amount of the filed claims. Such claims must be asserted in a determined amount as of the filing of the initial expert report for the site. In addition, any amendments to a claim asserted in a determined amount must be made as of this time. This requirement does not prohibit claimants from later amending the amount of their claims in accordance with applicable law; however, the parties acknowledge that any such amendment may warrant additional discovery, supplemental expert reports and/or changes to the schedules set forth herein. This requirement does not apply to Environmental Claimants who are potentially responsible parties, except to the extent they seek to assert amended proofs of claim.

Deadline for Submission of Written Testimony

July 16, 2007

California Gulch Site Hearing

JULY 23 THRU 27, 2007 AT 9:00 A.M. IN CORPUS CHRISTI.

**Band 1 Sites**<sup>9</sup>

ASARCO Notice of Band 1 Specific Objections

March 26, 2007

Band 1 Initial Expert Reports Due<sup>10</sup>

May 11, 2007

(including update of claim amounts and assertion of all claims in a determined amount)

Designation of Documents supporting Expert Reports and of potential witnesses and exhibits for hearing.

May 11, 2007

Band 1 Discovery Period (including expert depositions)

[TBD]

Band 1 Rebuttal Expert Reports Due

July 9, 2007

Parties' Agreement for structure of Band 1 Mediations Due

May 25, 2007

Band 1 Sites Witness/Exhibit Lists Exchanged

[TBD]

Band 1 Pre-Trial Briefs, Motions and Objections Due

[TBD]

Response Briefs

[TBD]

Deadline for Submission of Written Testimony

[TBD]

Band 1 Sites Pre-Trial Conference  
10:00 AM IN CORPUS CHRISTI.

August 3, 2007 at

Band 1 Sites Hearing(s)  
9:00 AM through August 24, 2007.

AUGUST 6 THRU 10, 2007 AT 9:00 A.M. IN  
CORPUS CHRISTI.

---

<sup>9</sup> Band 1 includes the following sites: Omaha, NE; El Paso, but only property not owned by the Debtors (including El Paso County Metals Survey Site and Dona Ana Metal in New Mexico; the extent to which the Case Management Order, including the scheduling of any estimation proceedings, will apply to the Proof of Claim filed by the City of El Paso (claim no. 9894), will be reserved and addressed at the next status conference on April 17, 2007); Taylor Springs, IL; Golinsky, CA.

<sup>10</sup> All parties wishing to submit expert testimony relating to the Band 1 Sites must exchange expert reports by this date.

**Band 2 Sites<sup>11</sup>**

ASARCO Notice of Band 2 Specific Objections	April 16, 2007
Band 2 Initial Expert Report(s) Due <sup>12</sup> (including update of claim amounts and assertion of all claims in a determined amount)	June 15, 2007
Designation of Documents supporting Expert Reports and of potential witnesses and exhibits for hearing.	June 15, 2007
Band 2 Discovery Period (including expert depositions)	[TBD]
Band 2 Rebuttal Expert Report(s) Due	August 10, 2007
Parties' Agreement for structure of Band 2 Mediations Due	June 15, 2007
Band 2 Sites Witness/Exhibit Lists Exchanged	[TBD]
Band 2 Pre-Trial Briefs, Motions and Objections Due	[TBD]
Response Briefs	[TBD]
Deadline for Submission of Written Testimony	[TBD]
Band 2 Sites Pre-Trial Conference 10:00 AM IN CORPUS CHRISTI.	September 21, 2007 at
Band 2 Site Hearing(s) 9:00 AM through September 28, 2007; and either: (i) October 1 2002 through October 6, 2007; or (ii) subject to the alternative week of) October 9, 2007 through October 13, 2007, based on the USA's expert witness availability to be announced on April 17, 2007).	September 24, 2007 at
IN CORPUS CHRISTI.	

---

<sup>11</sup> Band 2 includes the following sites: Azurite, WA; Everett Smelter, WA; B&L Woodwaste, WA; East Helena Yards and NRD (at unowned properties), MT; Butte/Silver Bow Creek, MT; CDA (Box and Basin), ID (the estimation for CDA, ID and the terms of the Case Management Order do not apply to the Coeur d'Alene Tribe's claims nos. 10993, 11012 and 11013); Barker-Hughesville, MT (Block P); Iron Mountain, MT; and Tacoma Smelter Plume, WA.

<sup>12</sup> All parties wishing to submit expert testimony relating to the Band 2 Sites must exchange expert reports by this date.

**Band 3 Sites**<sup>13</sup>

ASARCO Notice of Band 3 Specific Objections	April 30, 2007
Upper Blackfoot/Mike Horse Claim Specifics Due	July 1, 2007
Band 3 Initial Expert Report(s) Due <sup>14</sup> (including update of claim amounts and assertion of all claims in a determined amount)	July 27, 2007
Designation of Documents supporting Expert Report and of potential witnesses and exhibits for hearing.	July 27, 2007
Band 3 Discovery Period (including expert depositions)	[TBD]
Band 3 Rebuttal Expert Report(s) Due	September 17, 2007
Parties' Agreement for structure of Band 3 Mediations Due	June 15, 2007
Band 3 Sites Witness/Exhibit Lists Exchanged	[TBD]
Band 3 Pre-Trial Briefs, Motions and Objections Due	[TBD]
Response Briefs	[TBD]
Deadline for Submission of Written Testimony	[TBD]
Band 3 Sites Pre-Trial Conference 10:00 A.M. (as to all Band 3 sites, not including USIBWC).	October 15, 2007 at
Band 3 Site Hearing(s) 9:00 AM through October 19, 2007 and as to USIBWC 9:00 AM. IN CORPUS CHRISTI.	October 16, 2007 at November 1, 2007 at

---

<sup>13</sup> Band 3 includes the following sites: Tri-States Sites (Cherokee, Jasper, Newton, and Tar Creek); SE MO Sites (Madison County/Catherine Mine, Big River/Federal Mine Tailings (St. Francois County) (the Debtors and the Quapaw Tribe believe and will assert that the Tribe's subsidence claim should be estimated at the same time as the Tri-States natural resource damage claims), Westfork Mine, Sweetwater Mine, and Glover Smelter); Selby Smelter CA; Mike Horse/Upper Blackfoot (MT); Nueces Bay/Corpus Christi, TX, the Encycle Texas Site; and USIBWC (to be heard on Nov. 1, 2007 at 9:00 AM). Band 3 does not include, and the terms of the Case Management Order do not apply to, 4000 Agnes Street in Corpus Christi, TX and Claim No. 8000 as amended by Claim No. 10836 filed by Roan Real Estate Company, Inc. and Federal Iron and Metal, Inc.

<sup>14</sup> All parties wishing to submit expert testimony relating to the Band 3 Sites must exchange expert reports by this date.